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WATER SUPPLY CONTRACT

BETWEEN

CITY OF CARRINGTON, ND

AND

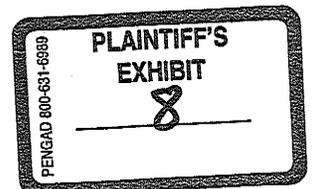
STUTSMAN RURAL WATER DISTRICT, ND

This Contract for the sale and purchase of water is entered into between the City of Carrington, hereinafter referred to as "CARRINGTON", and the Stutsman Rural Water District, hereinafter referred to as "STUTSMAN".

WITNESSETH

The following Recitals shall be deemed a part of this agreement and the parties agree that they accurately set forth the circumstances and basis upon which this agreement has been executed.

- **Whereas**, the City currently owns and operates well facilities, a water treatment plant and a water distribution system.
- **Whereas**, the Carrington Water Treatment Plant currently has the capacity to treat approximately one million gallons per day and is anticipating an expansion and renovation of the Water Treatment Plant in the year 2010. Therefore, CARRINGTON currently has the capacity to sell to STUTSMAN up to 12 million gallons per year, and CARRINGTON will have the capacity to sell STUTSMAN up to 25 million gallons per year after CARRINGTON's 2010 expansion of the Water Treatment Plant is completed, without jeopardizing the provision of water service to the City of CARRINGTON, during the term of this agreement.
- **Whereas**, STUTSMAN has been organized and established by the Stutsman Rural Water District of the State of North Dakota, for the purpose of constructing and operating a rural water distribution system.
- **Whereas**, STUTSMAN intends to purchase water from CARRINGTON for distribution by STUTSMAN to its customers in the northern and western portion of their water system.



- **Whereas**, it is the intent of the parties hereto that STUTSMAN is contracting for the purchase of water and the right to purchase additional water if so needed from CARRINGTON. CARRINGTON is not selling and STUTSMAN is not purchasing or acquiring any ownership interest in the Carrington Water Treatment Plant or their water distribution system.
- **Whereas**, on _____, the CARRINGTON Council did pass a resolution authorizing CARRINGTON to enter into a contract with Stutsman for the sale of potable water.
- **Whereas**, on _____, the Stutsman Rural Water District Board did pass a resolution authorizing STUTSMAN to enter into contract with CARRINGTON for purchase of potable water; and
- **Whereas**, it is the intention of STUTSMAN to construct a meter/booster station on the southern portion of the City of CARRINGTON, at an agreed upon location by both parties, and construct a water supply line to connect the City of CARRINGTON's distribution system to Stutsman Rural Water System's distribution system to provide an additional source of potable water to its rural water users in the north and west portions of STUTSMAN's rural water system;
- **Now therefore**, in consideration of the foregoing and the mutual agreements hereinafter set forth.

A. CARRINGTON AGREES:

1. **Quality and Quantity:** To furnish STUTSMAN, at a point of delivery mutually agreed upon during the term of this contract or any modification, renewal, or extension thereof, potable treated water meeting required water quality standards of the United States Environmental Protection Agency at the point of connection, in such quantity as may be required by STUTSMAN, with a annual allocation of up to 12 million gallons per year until such time CARRINGTON's 2010 Water Treatment Plant Expansion is completed and up to 25 million gallons per year after CARRINGTON's Water Treatment Plant expansion is completed, and not to exceed the rate of flow available from CARRINGTON that may adversely affect CARRINGTON'S water treatment plant's and water distribution system's capacity to adequately serve their own customers. The approximate location of the point of connection is shown in Attachment A. In the event CARRINGTON is capable of, and does in fact, furnish STUTSMAN with quantities of water exceeding the 25 million gallons per year, after the Water Treatment Plant expansion is completed, such action shall not be deemed to be a waiver of said limitations.

2. **Failure to Deliver and Shortages:** To operate and maintain its system in an efficient manner at all times and will take such action as may be necessary to furnish STUTSMAN with quantities of water required by STUTSMAN. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or if the supply of water available to CARRINGTON is otherwise diminished over an extended period of time, the supply of water to STUTSMAN shall be reduced or diminished in the same ratio or proportion as the supply available to CARRINGTON for distribution to its consumers is reduced or diminished.
3. **Meter Reading & Billing:** To read the water meters (provided under paragraph B.8.) on or about the first day of each month, record the readings, and use the readings for the purposes of preparing a bill to the STUTSMAN. The bill will be prepared and presented to STUTSMAN at its office on or before the tenth day of the month.
4. **Allocation of Facilities:** STUTSMAN shall, by and according to the provisions of this Agreement, have access to and use of Carrington water supply, treatment, storage, and transmission facilities. It is intended that STUTSMAN receive such water with benefits of current pressure conditions as currently available from the Carrington Water Treatment Plant and Carrington Elevated Tower.

B. STUTSMAN AGREES:

1. **Connection:** STUTSMAN will pay for and install a meter/booster station at an agreed upon location in the southern portion of the City of CARRINGTON and a water supply line connecting the City of CARRINGTON's distribution system to the STUTSMAN distribution system. STUTSMAN will maintain the meter/booster station and water supply line during the term of this agreement and shall be of no cost to the City of CARRINGTON. STUTSMAN does not obtain any type of ownership interest in any of CARRINGTON's treatment facility or water distribution or storage system except the meter/booster station and water supply line installed under this project.
2. **Connection Fee:** STUTSMAN will pay the City of CARRINGTON, a one time Connection Fee of \$65,000.00 for the right to purchase up 12 million gallons of water per year from CARRINGTON at the rate and conditions as stipulated under **B.12** (Water Rate), of this agreement. The Connection Fee shall be paid by STUTSMAN to the City of CARRINGTON within 30 days of STUTSMAN making the connection to the City of CARRINGTON. The Connection Fee will increase proportionately if STUTSMAN's water purchase from the City of CARRINGTON exceeds 12 million gallons of water per year as stipulated in **B.3** and **B.4** of this agreement.

3. **Minimum Available Capacity:** The minimum capacity to be contracted for by STUTSMAN pursuant to this agreement is up to 12 million gallons per year (GPY) until such time CARRINGTON's 2010 Water Treatment Plant expansion is completed and up to 25 million gallons per year (GPY) after CARRINGTON's Water Treatment Plant expansion is completed.
4. **Optional Capacity:** STUTSMAN will have the option to contract for additional water for the same price per 1000/gallons stipulated under by this agreement if such water is required and if such water is available from CARRINGTON.
5. **Area of Service:** It is agreed by the parties that a one-half ($\frac{1}{2}$) mile jurisdiction around the City of CARRINGTON will be established and will be adjusted as areas are annexed to the City of CARRINGTON, so that the areas will always be one-half ($\frac{1}{2}$) mile from the then existing corporate boundaries. STUTSMAN agrees that areas which lie within the one-half mile corridor may be annexed from time to time. Nothing in this agreement shall limit CARRINGTON'S ability to annex property. STUTSMAN may provide rural water service to any areas located outside the one-half mile jurisdiction area of CARRINGTON including existing subdivisions. Users and subdivisions within the one-half mile jurisdictional area may be served by STUTSMAN with concurrence from CARRINGTON. If STUTSMAN receives a request to provide service to any new user or area located in the one-half mile jurisdictional area around CARRINGTON, STUTSMAN will promptly notify CARRINGTON and STUTSMAN's lien holders of such a request. Within sixty (60) calendar days of receipt of such notice CARRINGTON may elect to prohibit STUTSMAN from providing water service to such user or area. If CARRINGTON does not so elect, STUTSMAN may provide such service.
6. Notifications required under this paragraph shall be in writing between the respective Parties. Additionally, it is agreed by STUTSMAN that they will not offer, extend, or provide any water through their System or infrastructure to any existing users of CARRINGTON.
7. **Termination of Service Upon Annexation or Intent to Annex:** If an existing service area of STUTSMAN is proposed to be annexed by CARRINGTON, CARRINGTON shall provide written notice to STUTSMAN of the intent to annex the said service area. STUTSMAN will forward said notice to its lien holders. STUTSMAN will terminate its water service to the proposed annexed territory within 120 days unless another time period mutually agreed to between STUTSMAN and CARRINGTON provided that STUTSMAN is compensated for lost service in accordance with Section B.8.
8. **Transmission System Upon Annexation:** If STUTSMAN constructs its main transmission pipelines and water service pipelines to curb stops according to the current Standard Specifications for CARRINGTON, at the time of construction of STUTSMAN, CARRINGTON, upon annexation of the area which includes an active main transmission pipeline utilized by STUTSMAN, shall, except as provided for below, purchase from

STUTSMAN, said main transmission pipeline(s) to the curb stops.

9. The purchase price will be based upon the cost of construction of the said portion of the main pipeline(s) based upon thirty (30) year straight line depreciation.
10. (Exception to Purchase of Main Transmission Line) - If a main transmission pipeline necessary to maintain service to the existing STUTSMAN distribution system is annexed by CARRINGTON, CARRINGTON shall either:
 - a. Elect to purchase the main transmission line. As purchase price for the main transmission line, CARRINGTON shall relocate and reconstruct said pipeline so as to reintegrate STUTSMAN system on a non-betterment basis; or
 - b. Choose not to purchase the main transmission line and allow STUTSMAN to operate and maintain the water transmission pipeline(s) in its current location. If STUTSMAN does not construct the main transmission pipelines to curb stops according to the current Standard Specifications of CARRINGTON; CARRINGTON after a period of five (5) years from construction of the facility by STUTSMAN will have no obligation to purchase STUTSMAN's transmission facilities in the event of annexation. If such an area is annexed within a five (5) year period from STUTSMAN's construction, CARRINGTON shall purchase said facilities based upon the construction price of the said facilities and a seven (7) year straight line depreciation of those facilities.
11. **Metering Equipment:** To furnish, install, operate, and maintain at its own expense at each point of delivery, the necessary metering equipment and backflow prevention device, including, but not limited to, a meter vault, pit or house, visual remote, water sampling device, flow recording device and required devices of standard type for properly measuring the quantity of water delivered to STUTSMAN. Said equipment must be acceptable to CARRINGTON. The approximate location of the connection point is shown in Attachment A. If additional points of delivery are required by STUTSMAN in the future, a separate amendment to this agreement must be agreed upon by CARRINGTON and STUTSMAN.
12. **Water Rate:** To pay CARRINGTON for the actual quantity of water that has been metered at the point of delivery, not later than the twentieth (20th) day each month, the cost of all water delivered during the preceding month as determined by STUTSMAN's metering equipment. The water rate for water supplied to STUTSMAN from CARRINGTON shall be a mutually agreed price meant to approximate the cost of production and delivery of the water including system losses and operation and maintenance costs. The agreed upon rate for the water so supplied is One Dollar and Fifty Eight Cents (\$1.58) per thousand gallons. The water rate so determined shall be valid until an adjustment is made by CARRINGTON to its existing users. Future adjustments to the rates may be necessary and are anticipated upon the completion of the 2010 expansion to the CARRINGTON Water Treatment Plant. If adjustments to the rates

are made, they shall be in similar proportion to increases in the rates of the other existing Carrington residential users. The resulting rate charge shall be rounded to the nearest whole cent. The basis for future adjustments will be the existing rate for Carrington residents.

- 13. Indemnify - Fire:** To hold harmless CARRINGTON from any and all liability, express or implied, arising out of or in connection with personal injuries or property damage resulting from the operation, maintenance, and repair of STUTSMAN distribution system unless such liability is due to the negligence of CARRINGTON.

C. CARRINGTON AND STUTSMAN MUTUALLY AGREE:

- 1. Emergency Failures:** That emergency failures of pressure or supply due to main supply line breaks, power failures, pump failures, flood, fire, and use of water to fight fire, earthquakes or other similar catastrophes shall excuse CARRINGTON from furnishing water as provided under paragraph "A.1." for such reasonable period of time as may be necessary to restore service.

CARRINGTON is also not restricted in conducting activities on their System which are scheduled or planned which may interrupt service to STUTSMAN; however, notice of such scheduled or planned interruptions of service shall be given in a timely manner to STUTSMAN.

- 2. Delinquent Bills:** That the sum due under paragraph "B.12." above, if not paid on or before the twentieth (20th) day of each month, shall be declared delinquent, and service may thereafter be discontinued by CARRINGTON after two (2) written notices have been served by CARRINGTON for two (2) consecutive weeks to STUTSMAN. All bills not paid by the twentieth (20th) day of each month shall be subject to a one and one-half percent (1½%) late charge on the unpaid balance.

3. Calibration and Adjustments of Metering Equipment:

- a. That if either party believes a meter reading to be in error, it shall present its claim, in writing, to the other party's business office before said bill is delinquent (not later than the twentieth (20th) day of the month). Such claim, if made after the bill has become delinquent, shall not be effective in preventing discontinuance of service, as hereinafter provided. STUTSMAN must pay said bill under protest and said payment shall not prejudice the claim of error.
- b. Upon either party presenting a claim of error in a meter reading, the meter will be calibrated, upon payment of the actual cost of the calibration by the requesting party, provided however, that if the meter is found to over-register beyond two percent (2%) of the correct volume, CARRINGTON shall bear the cost of calibration and if the meter is found to under-register beyond two percent (2%) of the correct volume STUTSMAN shall bear the cost of calibration.

- c. Any adjustments of STUTSMAN 's bill, in the event of over-registering or under registering of a meter, as shown by calibration, shall not eliminate the obligation to make future payments required by STUTSMAN of any amounts as set forth in this contract. If adjustments are required based upon the calibration they shall be made to the current month's and previous month's billing. Adjustments made based upon meter failure shall be negotiated based upon records available.
4. **Rates:** It is agreed that the connection fees and water rates may be changed by CARRINGTON but that any increase or decrease in connection fees or water rates affecting STUTSMAN shall be based on changes in accordance with Item B.12 of this agreement.
5. **Regulatory Agencies:** That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in the State of North Dakota, and CARRINGTON and STUTSMAN will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.
6. **Review Required:** That the construction of the water supply distribution system by STUTSMAN is being financed in part, by loans provided through various agencies. A copy of this contract and any amendments thereto will be provided to lien holders of STUTSMAN for their review.
7. **Modification of Contract:** That this contract shall be self-renewing during the forty (40) year term, subject only to the annual adjustments to water rates, if any. The renewal date of the contract shall be January 1 of each year. Other provisions of this contract may be modified or altered by mutual agreement.
8. **Successor to STUTSMAN and Assignability:**
 - a. Any successor of STUTSMAN, whether the result of legal process, or otherwise, shall succeed to the rights of the STUTSMAN hereunder with the written approval of CARRINGTON, which cannot be unreasonably withheld.
 - b. This agreement shall be assignable to an existing lien holder of STUTSMAN upon written notice to CARRINGTON and any other existing lien holders.
9. **Term of Contract:** That this contract shall extend for a term of forty (40) years from the date of execution of this contract by all parties and, thereafter may be renewed or extended for such term, or terms, as may be agreed upon by STUTSMAN and CARRINGTON.
10. **Partial Invalidity:** If any provision of this contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall

nevertheless continue in full force without being impaired or invalidated in any way.

11. Audit: Upon thirty (30) days' notice to CARRINGTON by certified mail, STUTSMAN, at its own expense, may audit or examine the account records and related materials of CARRINGTON that pertain to the water rate charged by CARRINGTON.

12. Expiration of Prior Agreements: Upon execution by all parties to this agreement, any and all prior existing Water Supply Contracts are null and void.

In Witness Whereof, the parties, hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in three (3) counterparts, each which shall constitute an original.

CITY OF CARRINGTON

Attest:

Pam Jerome
Deputy Auditor
Title

By: Ronald Fry
Mayor
Title

Date: 5-28-10

STUTSMAN RURAL WATER DISTRICT

Attest:

Darrell Patzer
Mardee Heinrich, Secretary
Darrell Patzer, Vice President

By: Terry Nieland
Terry Nieland, Chairman

Date: 6/15/10

**AMENDMENT TO AGREEMENT FOR THE
SALE OF WATER BY THE CITY OF CARRINGTON
TO STUTSMAN RURAL WATER DISTRICT**

The City of Carrington presently has a Water Sales Agreement with the Stutsman Rural Water District developed in the year of 2010 at which such agreement is amended and re-enacted as follows:

1. Section B. 2. Connection Fee. Replace Section B.2. with the following:

STUTSMAN has paid CARRINGTON, a one-time connection fee of \$65,000 for the right to purchase up to 12 million gallons of water per year from CARRINGTON, and has the option to increase from 12 million gallons per year up to 25 million gallons per year after CARRINGTON's water treatment plant expansion is completed for the same proportionate connection fee, at the rate, and the conditions as stipulated under B.12 (Water Rate), of this agreement. STUTSMAN will pay CARRINGTON an additional one time connection fee of \$124,660.00 for the right to increase the purchase of water from 12 million gallons up to 35 million gallons of water per year from CARRINGTON at the rate and conditions as stipulated under paragraph B.12 of the original 2010 contract. The Additional Fee will be paid to CARRINGTON by September 1, 2012.

out 1st 2012

All other terms and conditions as set forth in the 2010 contract will remain in full force and effect for the duration of the contract.

CITY OF CARRINGTON

Attest:

Heather Carr
City Auditor
Title

By: _____

Donald Fry
Donald Fry

ITS: Mayor

Date: _____

9-12-12

STUTSMAN RURAL WATER DISTRICT

Attest:

Mardee Heinrich
Mardee Heinrich, Secretary

By: Terry Nieland
Terry Nieland
ITS: Chairman of the Board

Date: October 9, 2012